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STATE PASS USTR FOR B. WEISEL, C. WILSON
STATE PASS USPTO
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SUBJECT: SPECIAL 301 RESULTS CONTROVERSIAL, CL'S BLAMED FOR
DOWNGRADE

REF: SECSTATE 56533

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¶1. Summary: Thailand's placement on USTR's Special 301 Priority Watch List (PWL) for IPR violations sparked controversy and recrimination, but also an RTG commitment to work with the USG to improve IPR protection and find a way off the list. As expected, RTG officials, press and general public presumed the primary factor for the PWL decision was the recent controversy over compulsory licenses on pharmaceutical products, and glossed over most other IP concerns. Commerce officials and private sector groups are nervous that the PWL decision will affect their eligibility for GSP benefits and will further damage Thailand's image as a favorable destination for investment. Department of Intellectual Property officials reacted defensively to the USG decision, but are anxious to return to the good graces of the U.S. End Summary.

¶2. On April 30, in advance of the release of the USTR Special 301 report, Econoff and USPTO Attache met with Department of Intellectual Property (DIP) Director General Ms. Puangrat Asvapisit and broke the news that Thailand would be elevated to Priority Watch List. DIP officials were disappointed but not surprised by the decision. As expected, officials assumed the decision was driven by USG displeasure over the RTG action in late 2006 and early 2007 to issue compulsory licenses (CLs) on three patented drugs, including two HIV/AIDS medicines patented by U.S. companies. Econoff explained that while the compulsory licenses were cited as a concern in USTR's report, the issue was only one of many cited and not the deciding factor. DG Puangrat countered that raids, seizures and arrests for IP crimes had increased in 2006 and saw no other significant deterioration of IP protection that would warrant a downgrade other than the compulsory license actions. Nevertheless, Emboffs engaged in a fruitful discussion with DIP of Thailand's IP shortcomings and agreed to meet again to discuss means to address USG concerns. DIP was relieved that Thailand's GSP benefits would not be directly affected by their placement on PWL.

¶3. In a press briefing on May 1, the Ambassador explained the Special 301 decision and the underlying reasons behind Thailand's elevation to PWL. English language and Thai papers gave front page placement for the news and have continued to give prominent, though mostly negative, treatment to the story throughout the week. "Outrage grows at US trade pressure", screamed a front page headline on Thursday's English language daily The Nation. Most papers picked up the Ambassador's explanation of the reasons for the downgrade to PWL, and the context of the compulsory license issue. Nevertheless,

typical stories declared CLs as the primary reason and included defiant statements from the Minister of Public Health that his Ministry would not back down under USG pressure and would maintain the CLs in force. The Minister blamed the PWL decision on pressure on USTR from U.S.-based pharmaceutical companies. However, several papers also detailed the long list of other IP concerns mentioned in the 301 report and explained in the press conference.

14. Early press stories before the 301 announcement predicted a PWL decision would result in an immediate cut off of Thailand's trade benefits under the Generalized System of Preferences (GSP) program. The Ambassador's statement that PWL would not trigger a change in the GSP program toned down ensuing stories, but press reports nevertheless characterized the move as a trade retaliation, and quoted industry concerns about future cuts in trade benefits. RTG officials and local business also expressed angst over yet another blow to Thailand's investment environment, following on controversial capital controls and proposed amendments to the Foreign Business Act that would restrict foreign investment.

15. In a bizarre twist to the story, the RTG discovered that a pro-pharma NGO in the U.S., USA for Innovation, that was advocating Priority Watch List for Thailand was linked to former PM Thaksin. The NGO's executive director, Ken Adelman, is a senior adviser to Edelman Public Relations, a firm also contracted by Thaksin. Accusations flew that Thaksin had somehow used the connection to influence USTR's decision to further discredit the current government.

16. On May 3, 30-40 demonstrators representing a local HIV/AIDS organization protested the PWL decision in front of the U.S. Embassy. Ambassador invited the group's leaders to discuss the issue but was rebuffed; one protestor said, "We came to shout at you, not to talk to you." After two hours of protests the group dispersed. Local press widely covered the demonstration, but also noted the group's refusal to meet with the Ambassador.

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Minister of Health takes to the Hustings

17. Press reported PM Surayud was concerned over the PWL placement and has decided the answer is, naturally, for the RTG to better explain its decision to issue CLs. Having postponed an earlier trip due to medical reasons, Minister of Public Health Mongkol na Songkhla will be traveling to the U.S. May 21-22 to meet with USG officials on the topic. Before meeting in Washington, he also plans to travel to New York City on May 8 to sign a deal with the Clinton Foundation on bulk procurement of drugs. From there he travels to Geneva for World Health Assembly meetings. The Minister reportedly is scheduled to meet health officials from other developing countries to discuss the use of CLs. In a pre-departure conversation with the Ambassador, the Minister said the CLs were "over" and that he was "getting bored" of the issue. The Minister responded favorably to Ambassador's suggestion he meet with pharma company headquarters during his visit to New York.

Next steps

18. DIP officials have agreed to meet with Embassy on May 11 to discuss next steps and a possible IPR Action Plan to guide the way for eventual removal from PWL. Embassy plans to discuss a Plan oriented toward improving enforcement activities and reforming judicial practices that have hampered enforcement efforts in the past. Commerce officials have already announced plans to form an interagency group of IPR-related agencies to discuss issues with the U.S.

19. Comment: Controversy over Thailand's downgrade to Priority Watch List was inevitable. Months of emotional arguments in favor of and against compulsory licenses primed the Thai public for what is now considered the U.S.'s retribution. Criticism has been severe at times, and the story continues to have legs. However, fears that the issue would be seized upon by the coup-installed government or a

political party to stake out a nationalist position have not yet materialized. As hoped, lower level officials in DIP and the Ministry of Commerce have not let their disappointment become a rejection of U.S. concerns on intellectual property and seem prepared to work with Embassy on new initiatives. The year will see if the RTG is prepared to bring forth a more serious approach to enforcement, but we remain cautiously optimistic that today's negative story will still bear fruit tomorrow.

BOYCE